

EXHIBIT D

From: [Matt Matthews](#)
To: [Ethan Roman](#); [David Villarreal](#); [James Chambers](#)
Cc: [Steven Wittels](#); [Burkett McInturff](#)
Subject: RE: Mirkin v. XOOM - Supplemental Class Data Production
Date: Tuesday, February 21, 2023 3:54:20 PM
Attachments: [image001.png](#)

Ethan, we've looked into this issue further and continue to believe that supplementing the class data is unnecessary at this time. At the outset of discovery, your firm agreed with our predecessors at McCarter & English that to avoid serial productions that would be burdensome and unnecessary, class data would be produced up to January 1, 2020. McCarter's discovery responses and their relevant correspondence to you and the court include that end date. And XOOM's productions of customer data have always used a January 1, 2020 cutoff—whether the customers were variable-rate customers, fixed-to-variable customers, or Planet Energy customers. Until your recent December 19, 2022 email, Plaintiffs had never objected to or questioned that cutoff—because, again, it was the parties' agreement.

If your class is certified (and, of course, we don't think it should be) supplementing class data could be appropriate. But there is no reason to do it now, especially given Plaintiffs' prior agreement to the January 2020 date. Most importantly, as I said below and when we talked, the supplemental data does not relate to any argument made in your class motion or our response—will be burdensome to collect now—and is not relevant to your reply.

Matt

Matt Matthews
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From: Matt Matthews
Sent: Wednesday, February 15, 2023 4:24 PM
To: Ethan Roman <edr@wittelslaw.com>; David Villarreal <david.villarreal@mhllp.com>; James Chambers <james.chambers@mhllp.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Burkett McInturff <jbm@wittelslaw.com>
Subject: RE: Mirkin v. XOOM - Supplemental Class Data Production

Hi Ethan, I will check. But, like I said on the call, pulling this information is burdensome for my client. And I still don't understand why you want or need to receive the data before a ruling on class certification—much less in the next 10 days. It has no bearing on any Rule 23 argument made in your motion or our opposition. You and Steve were unable to articulate a reason why you want this

supplemental data now except for Steve's statement that it relates to the "damages model." But the data won't impact your model. It could only potentially change the total under your model (which doesn't impact the class analysis) not the model itself. But anyway, like I said, I'll ask my client and then get back to you by next Tuesday.

Matt

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From: Ethan Roman <edr@wittelslaw.com>

Sent: Wednesday, February 15, 2023 4:02 PM

To: Matt Matthews <matt.matthews@mhllp.com>; David Villarreal <david.villarreal@mhllp.com>; James Chambers <james.chambers@mhllp.com>

Cc: Steven Wittels <slw@wittelslaw.com>; Burkett McInturff <jbm@wittelslaw.com>

Subject: Mirkin v. XOOM - Supplemental Class Data Production

Matt -

Following up on our call this afternoon, you committed to checking with your client and letting us know by next Tuesday, 2/21, about the timing for producing the supplemental data for XOOM customers as noted in my 12/19 email (attached). As we said on the call, we would like to receive this data within 10 days. Thank you.

Best,
Ethan

Ethan D. Roman

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